



MASSACHUSETTS BAY TRANSPORTATION AUTHORITY

REQUEST FOR PROPOSALS (RFP)

RFP#:7-23

COMMBUYS BID# 23-1206-MBTA-MBTA-
83240

GAP ANALYSIS OF CONTRACTOR OVERSIGHT

Date Issued: January 12, 2023

Contents

1. INTRODUCTION.....	4
2. SCOPE OF WORK.....	4
3. BIDDERS INSTRUCTIONS AND PROCUREMENT PROCESS.....	6
3.1 Bidders' Conference	6
3.2 Procurement Method.....	6
3.3 RFP Calendar and Delivery Instructions	7
3.4 Dissemination of Confidential Information	7
3.5 Examination of RFP	7
3.6 Rules of Contact.....	8
3.7 Clarifications of Specifications, Questions and Answers	8
3.8 RFP Addendum	9
3.9 MBTA Standard Contract and Terms & Conditions	9
3.10 Confidentiality / Public Information Act Disclosure Requests	9
3.11 Business Conduct.....	10
3.12 Collusion	11
3.13 Prices	11
3.14 Acceptance Period	11
3.15 Eligible Entities.....	11
3.16 Pre-Contractual Expenses	11
3.17 Tax Exemption.....	11
3.18 Insurance	11
4. SUBMISSION OF RESPONSE	11
4.1 Response Submissions	12
4.2 Power of Attorney.....	12
4.3 Acceptance of Response	12
4.4 Incomplete Response	13
5. MBTA POLICIES.....	13
5.1 Small, Minority, Women, and Other Disadvantaged Businesses.....	13
6. SELECTION PROCESS AND EVALUATION.....	13
6.1 Response Opening and Confidentiality	13
6.2 Responsiveness Review and Basis of Award.....	13
6.3 Evaluation and Notification	14

6.4	Pass/Fail Evaluation	14
6.5	Technical Response and Evaluation	14
6.6	Price Proposal Evaluation	15
6.7	Basis of Award: Best – Value Proposal.....	16
6.8	Successful Bidder	16
6.9	MBTA Reserved	16
6.10	Appeal / Protest Procedures	18
7.	CONTRACT STRUCTURE	18
	<i>Enclosure 1 – Bid Cover Letter</i>	<i>19</i>
	<i>Form A: Pre-Award Bidder Evaluation Data Form.....</i>	<i>21</i>
	<i>Form B: Technical Response</i>	<i>23</i>
	<i>Form C: Small Business Program Attestation Form</i>	<i>26</i>
	<i>Form D: Requested RFP Pricing Form.....</i>	<i>27</i>
8.	MBTA STANDARD CONTRACT AND TERMS AND CONDITIONS INSTRUCTIONS FOR VENDORS....	28
8.1	MBTA Standard Contract Instructions (Section 9.0)	28
8.2	MBTA Standard Terms & Conditions Instructions (Section 9.0)	28
9.	Massachusetts Bay Transportation Authority Standard Contract	29
9.1	Standard Terms and Conditions	30

Attn: Bidder/s

Request for Proposals (RFP) # **7-23**

RFP Description: MBTA CAPITAL PROGRAM – GAP ANALYSIS OF CONTRACTOR OVERSIGHT

Dear Madam/Sir,

The Massachusetts Bay Transportation Authority (“MBTA” or “Authority”), a corporate and a political subdivision of the Commonwealth of Massachusetts, existing pursuant to Mass. Gen. Laws, Chapter 161A (as amended) invites Bidders to participate in the competitive bid for **Description**. The Scope of Work is outlined below in Section 2.1. The MBTA may at its own discretion award the contract(s) to one or multiple Bidders. All formal communication with the MBTA during the bidding period shall be only through the designated point of contact.

The MBTA’s prime point of contact for this solicitation will be:

Jimmy Moynihan
Massachusetts Bay Transportation Authority
10 Park Plaza, Room 2810
Boston, MA 02116
Email: JMoynihan@MBTA.com

The RFP shall be launched through COMMBUYS and proposals must be submitted electronically no later than 2/6/2023 2:00 PM, in full compliance with this RFP including but not limited to Section 3, Bidders Instructions and Procurement Process. This RFP shall remain in force until the execution of the Contract, or until modified or cancelled by the MBTA.

Respectfully,
Jimmy Moynihan

Massachusetts Bay Transportation Authority
RFP # **7-23**

1. INTRODUCTION

The Massachusetts Bay Transportation Authority, more commonly known as the T, is one of the oldest public transit systems in the United States. It's also the largest transit system in Massachusetts. As a division of the Massachusetts Department of Transportation (MassDOT), the MBTA provides subway, bus, Commuter Rail, ferry, and paratransit service to eastern Massachusetts and parts of Rhode Island.

The Red, Orange, Blue, and Green subway lines provide fast, easy connections to and from Boston and surrounding cities, including Cambridge, Newton, Revere, and Quincy. The MBTA operates 171 bus routes and 4 bus-rapid transit routes in the Greater Boston area, with connections to the subway and commuter rail.

The Commuter Rail connects eastern Massachusetts with transit hubs in Boston, including subway, bus, and Amtrak services. Boston's commuter ferry service connects the inner and outer harbor with transport hubs in Boston at the Charlestown Navy Yard and Logan Airport.

Additionally, the RIDE is the MBTA's door-to-door paratransit service for customers who cannot easily use or access the T, whether they live in the Boston area or are visiting from out of town.

2. SCOPE OF WORK

The purpose of this Request for Proposals (RFP) is to procure the services of Architectural & Engineering (A/E) consultant firms to provide a Gap Analysis of Contractor Oversight Services.

The Offeror is required to respond to this RFP with a Technical Proposal that will be reviewed and evaluated to select the most qualified Consultants to perform some, or all the services described below.

The MBTA is requesting a General Engineering Consultant to provide support to the Capital Program Support will work with MBTA's Engineering and Maintenance, Transit Facilities Maintenance, Human Resources, External Contractors, Labor Relations, and Safety to assess gaps, define roles and responsibilities, and develop a staffing plan required for the Capital Program oversight of construction activities.

This support is related to an **FTA Special Directive No. 22-9**, Category 1: Managing the Impact of Operations, Maintenance, and Capital Project Requirements on the Existing Workforce. In their finding **#4, the MBTA requires additional oversight of contractor work sites.**

- 2.1 The term "Respondent" as used herein means any prospective services firm(s) or team who responds to this RFQ/P by submitting a Proposal. The Consultants shall perform specific tasks and activities in each of these areas as specified in this Scope of Services.
- 2.2 The services shall be performed in support of the MBTA's Capital Programs, and under the direct supervision and administration of MBTA Capital Programs.
- 2.3 Consultant tasks will be authorized on the basis of individual task orders that will include project description, scope of work, estimated task hours, cost and schedule. For each project task, the Consultant will respond in writing within five working days after receipt of a verbal/written request from the MBTA. This response shall include a proposed work plan, subject to MBTA approval, including scope of services, manhour estimate, specific staffing, cost estimate and schedule.

The Consultant will be expected to submit for MBTA's approval a time schedule for the services on any given project, which may be adjusted as the project proceeds, and which will

include allowances for periods of time required for MBTA's review and for approval of submissions by authorities having jurisdiction over the project. The approved schedule shall not, except for reasonable cause, be exceeded.

Task under the contracts will be individually authorized and no services may be undertaken without an approved task order issued by MBTA. Each authorized task will reflect an upset limit for the cost of the task. The consultant shall not incur costs above that upset limit unless authorized by MBTA. The consultant will not be reimbursed for monies expended above the approved/authorized upset limit. No minimum amount of work is guaranteed to the consultant under this contract.

All Consultant services will be on an on-call, task-order basis. The tasks and services may vary based upon the project status, and the life cycle phase(s) (i.e. design, construction, installation, testing to include pre-revenue testing on extensions and modifications to facilities and systems) and new starts. The services will apply, as applicable, to the following MBTA modes of transportation:

- Heavy Rail
- Light Rail
- Commuter Rail
- Bus
- Paratransit Service (Mobility)
- Commuter Ferry

2.3.1 Specific Requirement

As Consultant shall furnish, without limitation, all necessary labor, material, hardware, software, tools, and equipment to complete the work as described in this document and the proposed scope of services. The intent here is to give a brief, general description of services which may be required. Consultant will conduct all work using applicable codes and standards providing the service to the level of professional care.

In addition, such roles and responsibilities may also include the following:

Scope: This will consist of:

- Analyzing the current MBTA inspection and resident engineering resources at the Contractor level of oversight by identifying areas of improvement including defining safety specific roles and responsibilities, inspection of responsible parties, training, assessing gaps and formulating a staffing and resource plan.
- Identifying and implementing solutions for near term staffing needs.
- Reviewing best practices to identify improvements and change/amend applicable policies and procedures accordingly.

Deliverables:

As a minimum, the Consultant shall submit the following deliverables:

- Schedule of assessments
- Developing a Gap Analysis Report - comparing the current state with an ideal state or goals, which highlights shortcomings and opportunities for improvement of the findings
- Develop a plan with schedules

3. **Term**

It is expected that the full engagement will span two years after the NTP, with up to three one-year options. On a semi-annual basis, deliverable timelines for the following twelve months will be determined.

4. **BIDDERS INSTRUCTIONS AND PROCUREMENT PROCESS**

4.1 **Bidders' Conference**

The MBTA will hold Bidders' conferences with all Bidders on 1/19/2023 at 10:00AM. Bidders may access the call by using the following link [Click here to join the meeting](#) or by dialing 929-352-1865 and code 919545490#. The Bidders' conference will permit interactive communication between all Bidders and the MBTA. The MBTA will provide written notice of any Bidders' conference via the COMMBUYS. If a Bidders' conference is conducted by telephonic or electronic means, the notice will inform Bidders of the manner of the meeting.

Each Bidder, by submittal of its Response, acknowledges the opportunity to attend any Bidders' conference, if held, was offered to all Bidders, and waives any right to challenge this procurement based on its attendance at, or failure to attend, a Bidders' conference.

Each Bidder is encouraged to attend Bidders' conferences, if held, with appropriate members of its proposed staff, and if requested by the MBTA, senior representatives of proposed team members identified by the MBTA. Nothing stated at any Bidders' conference or included in a written record or summary of a Bidders conference will modify this RFP or any other part of the RFP unless it is incorporated in an addendum issued.

4.2 **Procurement Method**

This RFP is issued pursuant to the following laws and regulations: Mass. Gen Laws, Ch. 161A; 801 CMR 21.00.

Bidder shall be responsible for making itself fully aware of, complying with, and in its Response addressing the impact of and compliance with all applicable laws and regulations.

This RFP will be launched and managed via COMMBUYS. Instructions for log-in and use of COMMBUYS are described in <http://www.mass.gov/anf/docs/osd/forms/instructions-for-vendors-responding-to-bids.docx>

Bidders may also contact the COMMBUYS Helpdesk at COMMBUYS@state.ma.us or the COMMBUYS Helpline at 1-888-MA-STATE. The Helpline is staffed from 8:00 a.m. to 5:00 p.m. Monday through Friday (Eastern Time), except on federal, state, and Suffolk county holidays.

It is the responsibility of Bidders to maintain an active registration in COMMBUYS and to keep current the email address of the Bidder's Designated Representative and to monitor that email inbox for communications from the MBTA, including responses to Bidder questions. The MBTA and the Commonwealth assume no responsibility if a Bidder's designated email address is not current, or if technical problems, including those with Bidder's computer, network, or internet service provider ("ISP") cause email communications sent to or from Bidder and the MBTA to be lost or rejected by any means including email or spam filtering.

Bidder shall review and study all documents thoroughly and report any discrepancies, omissions, technical queries, or other clarifications via COMMBUYS.

Questions and clarification requests submitted by Bidder will, together with MBTA's responses, be made available to all Bidders via COMMBUYS.

4.2.1 MBTA DESIGNATED REPRESENTATIVE

Unless specifically stated otherwise in this RFP, Bidder must submit changes to Bidder's designated representative and any other communications in writing to the MBTA's Designated Representative via COMMBUYS. The MBTA's Designated Representative is Jimmy Moynihan – Jmoynihan@MBTA.com.

4.2.2 IDENTIFICATION OF BIDDER DESIGNATED REPRESENTATIVE

When submitting a Bid, the Bidder must identify to the MBTA's designated representative its own Designated Representative to act on behalf of the Bidder relating to this procurement.

4.3 RFP Calendar and Delivery Instructions

Bidder is required to prepare and submit all required documents to MBTA electronically via COMMBUYS.

The MBTA anticipates carrying out the procurement process in accordance with the schedule noted in the table below. All times are local Boston, Massachusetts, USA, times unless otherwise indicated. The schedule is subject to modification at the sole discretion of the MBTA. Bidders will be notified of any change by an addendum to this RFP.

TABLE 2-1: RFP CALENDAR		
Procurement Activity	Date	Time
RFP issued	1/13/2023	C.O.B.
Pre-bid conference Click here to join the meeting Dial in - 1 929-352-1865 and code 919545490#	1/19/2023	10:00 a.m.
Deadline for submission of Proposer questions via COMMBUYS Q&A	1/24/2023	2:00 p.m.
Official Answers for Bid Q&A published by MBTA on COMMBUYS	1/30/2023	2:00 p.m.
Response Due Date	2/6/2023	2:00 p.m.
In-person or virtual presentations to MBTA (estimated)	2/27/2023	
Contract Execution (estimated)	3/6/2023	
Project Start Date (estimated)	3/13/2023	

4.4 Dissemination of Confidential Information

There is no confidential information with this RFP.

4.5 Examination of RFP

Each Bidder shall be solely responsible for examining, with appropriate care and diligence, the RFP, including RIDs and any addenda and material made available to Bidders by the MBTA, and for informing itself with respect to any and all conditions that may in any way affect the amount or nature of its Response, or the performance of the Contractor's obligations under the Contract with the MBTA. Failure

of the Bidder to so examine and inform itself shall be at its sole risk, and the MBTA will provide no relief for any error or omission.

The submission of a Response shall be considered prima facie evidence that the Bidder has made the above-described examination and is satisfied as to the conditions to be encountered in performing the Work and as to the requirements of the Contract.

4.6 Rules of Contact

Starting on the date the RFP is issued and ending on the earliest of (a) the award and execution of the Contract, (b) rejection of all Responses by the MBTA, or (c) cancellation of the procurement, the following rules of contact shall apply. These rules are designed to promote a fair and unbiased procurement process. Contact includes face-to-face, telephone, email, or formal written communication.

The specific rules of contact are as follows:

- i. No Bidder, or any of its team members, may communicate with another Bidder or its team members with regard to this RFP or either team's Response, except that subcontractors that are shared between two or more Bidder teams may communicate with their respective team members so long as those Bidders establish a protocol to ensure that the subcontractor will not act as a conduit of information between the teams. This prohibition does not apply to public discussions regarding the RFP at any MBTA sponsored Bidders' conferences.
- ii. No Bidder or representative thereof shall have any ex parte communications regarding the RFP, the Contract, or the procurement described herein with any member of the MBTA's Board of Directors, the Massachusetts Department of Transportation ("MassDOT") Board of Directors, or with any MassDOT or MBTA staff, advisors, contractors, or consultants involved with the procurement, except for communications expressly permitted by the RFP or except as approved in advance at the MBTA's Point of Contact's sole discretion. The foregoing restriction shall not, however, preclude or restrict communications with regard to matters unrelated to the RFP, Contract, or procurement or from participation in public meetings of the MBTA or MassDOT Boards of Directors or any public or Bidder workshop related to this RFP.
- iii. Any communications determined by the MBTA, in its sole discretion, to be improper may result in disqualification.
- iv. Any official information regarding this RFP will be disseminated from the MBTA's Point of Contact via COMMBUYS.
- v. The MBTA will not be responsible for or bound by any oral exchange or any other information or exchange that occurs outside the official process specified herein.
- vi. The MBTA will not be bound by, and Bidders should not rely on, any oral communications regarding the RFP. Use of any information gathered or received from other agencies or entities shall be at the Bidder's own risk.

4.7 Clarifications of Specifications, Questions and Answers

Bidders shall review the RFP and any addenda issued by the MBTA prior to the Response Date and request written clarification or interpretation of any perceived discrepancy, deficiency, ambiguity, error, or omission contained therein, or of any provision which the Bidder fails to understand or to which the Bidder is suggesting a change. Failure of the Bidder to so examine and inform itself shall be at its sole risk, and no relief for error or omission will be provided by the MBTA. Bidders shall submit, and the MBTA will respond to, questions and requests for written clarification in accordance with this Section.

Questions and clarification requests shall be minimized or aggregated to the extent possible. All questions and clarification requests shall be made by Bidder through the "Bid Q&A" tab in COMMBUYS. Such comments and questions may be submitted at any time prior to the applicable date specified in Section 3.3

or such later date as may be specified in any addendum and shall: (i) identify the document; (ii) identify the relevant section number and page number or, if it is a general question, indicate so; and (iii) not identify the Bidder in the body of the question or contain proprietary or confidential information. Questions submitted in any other format or method than that described above will not be considered.

Responses to requests for clarification or questions will be provided in writing and issued by the MBTA's Point of Contact via the COMMBUYS. In addition, the MBTA reserves the right to, in its sole discretion, not answer all questions submitted by Bidders.

It is the Bidder's responsibility to verify the MBTA's receipt of questions and clarification requests.

4.8 RFP Addendum

The MBTA reserves the right to issue addenda to the RFP after initial publication.

It is each Bidder's responsibility to monitor COMMBUYS for any addenda and any Bid Q&A records related to this RFP. The MBTA and the Commonwealth accept no responsibility and will provide no accommodation to Bidders who submit their Response based on an out-of-date RFP or on information received from a source other than COMMBUYS.

The Bidder shall acknowledge in its Technical Proposal Cover Letter (see Enclosure 1) receipt of all addenda and question and answer responses. Failure to acknowledge such receipt may cause the Response to be deemed non-responsive and be rejected.

4.9 MBTA Standard Contract and Terms & Conditions

The MBTA does not encourage attempts to negotiate the Section 10.0 Massachusetts Bay Transportation Authority Standard Contract Terms & Conditions. Many of these provisions are required by law; others are longstanding MBTA policy / practice. Accordingly, Bidders / proposers should only redline or object to provisions that they find absolutely unacceptable. Any rejection or modification of these provisions may disqualify a Bid / proposal as being non-responsive or non-compliant

4.10 Confidentiality / Public Information Act Disclosure Requests

4.10.1 Disclosure Waiver

Each Bidder, by submitting a Response to the MBTA in response to the RFP, consents to the disclosures described in this RFP, including this Section and all other disclosures required by law, and expressly waives any right to contest, impede, prevent, or delay such disclosure, or to initiate any proceeding that may have the effect of impeding, preventing, or delaying such disclosure, under Mass. Gen. Laws, ch. 66 (the Massachusetts Public Records Law or "Public Records Law") or any other law relating to the confidentiality or disclosure of information. Under no circumstances will the MBTA be responsible or liable to a Bidder or any other party as a result of disclosing any such materials. Each Bidder hereby further agrees to assist the MBTA in complying with these disclosure requirements.

4.10.2 Public Disclosure of Response Documents

After execution of the Contract, or in the event that the procurement is cancelled by the MBTA, the MBTA shall have the right to publicly disclose any and all portions of all the Responses. The MBTA will not disclose material deemed confidential by the MBTA in accordance with Section 4.10.3, unless otherwise required by law.

4.10.3 Disclosure Process for Requests Under the Public Records Law

All written correspondence, exhibits, reports, printed material, photographs, tapes, electronic disks, and other graphic and visual aids submitted to the MBTA during this procurement process, including as part of the response to this RFP, become the property of the MBTA upon their receipt by the MBTA and will not be returned to the submitting parties. Except as provided in the Public Records Law, all materials submitted to the MBTA are subject to release as public records. Bidders shall familiarize themselves with the provisions of the Public Records Law. In no event shall the MBTA, or any of their agents, representatives, consultants, directors, officers, or employees, be liable to a Bidder or Bidder team member for the disclosure of all or a portion of a Response or related information submitted during this procurement.

If a Bidder has special concerns about information which it desires to make available to the MBTA but which it believes constitutes a trade secret, proprietary information, or other information excepted from disclosure, such responding Bidder shall specifically and conspicuously designate that information **by placing “TRADE SECRET - PROPRIETARY” in the header or footer of each such page affected** and by identifying such trade secret, proprietary information in the Technical Proposal Cover Letter (see Enclosure 1). Nothing contained in this provision shall modify or amend requirements and obligations imposed on the MBTA by the Public Records Law or other applicable law. The provisions of the Public Records Law or other laws shall control in the event of a conflict between the procedures described above and the applicable law.

If the MBTA receives a request for public disclosure of all or any portion of a Response or its related information that is designated as “Trade Secret - Proprietary,” the MBTA will endeavor to use reasonable efforts to notify the applicable Bidder of the request. The Bidder can assert, in writing and at its sole expense, a claimed exception under the Public Records Law or other applicable law, within the time period specified in the notice issued by the MBTA and allowed under the Public Records Law. The Bidder can choose to defend any action seeking release of the records it believes to be confidential information. The Bidder shall indemnify, defend, and hold harmless the MBTA and its agents and employees from any judgments awarded against the MBTA and its agents and employees in favor of the party requesting the records, including any and all costs connected with that defense. This indemnification survives the MBTA’s cancellation or termination of this procurement or award and subsequent execution of a Contract. In submitting a Response, the Bidder agrees that this indemnification survives as long as the trade secret, proprietary information is in the possession of the MBTA.

The MBTA shall not under any circumstance be responsible for securing a protective order or other relief enjoining the release of information marked “Trade Secret – Proprietary” in any Response, nor shall the MBTA be in any way financially responsible for any costs associated with securing any such order or for any loss associated with the release of information marked “Trade Secret – Proprietary” or otherwise.

4.11 Business Conduct

All Responses submitted by a Bidder to the MBTA shall be made without collusion with any other Bidder(s) submitting a Response to this RFP.

Bidder shall not directly or indirectly, in relation to this RFP, give, promise, attempt to give, or approve or authorize the giving of anything of value, including by transferring all or part of the remuneration payable under any Contract, to:

- a) any person employed or representing the MBTA.
- b) any other person, including any public official.
- c) a political party or a labor union controlled by any governmental authority or political party; or
- d) a charitable or other organization, or an officer, director, or employee thereof, or any person acting directly or indirectly on behalf of the same

for the purpose of (i) securing any improper advantage for either Bidder or the MBTA; (ii) inducing or influencing a public official improperly to take any action or refrain from taking any action in order for either Bidder or the MBTA to obtain or retain business, or to secure the direction of business to either Bidder or the MBTA, or (iii) inducing or influencing a public official to use his or her influence with any governmental authority or public international organization for any such purpose.

4.12 Collusion

By the submission of a Bid in response to the RFP, the Bidder represents and certifies that its Bid is made without collusion with any other Bidder submitting a Bid on the same commodity / service and is in all respects fair and without fraud.

4.13 Prices

Bidders shall submit their pricing using **Form D: Requested RFP Pricing Form**. Prices submitted shall be valid throughout the Acceptance Period.

4.14 Acceptance Period

From and after the Response Due Date identified in Section 3.3 (as amended) the MBTA shall have one hundred and eighty (180) calendar days to award a Contract based on this RFP. Such 180-day period is the “Acceptance Period.” The Bidder’s Bid is irrevocable and shall remain open and available for acceptance by the MBTA during the entirety of the Acceptance Period. The MBTA reserves the right to extend the Acceptance Period with respect to any or all Bidders upon obtaining the applicable Bidder’s written consent to such extension.

4.15 Eligible Entities

Any contract resulting from this Bid will be open for use by all MassDOT Divisions.

4.16 Pre-Contractual Expenses

The MBTA shall not be liable for any pre-contractual expenses incurred by the Bidder in the preparation of its proposal. The Bidder shall not include any such expenses as part of its proposal. Pre-contractual expenses are defined as expenses incurred by the Bidder including but not limited to preparing its Bid in response to this solicitation, submitting its Bid to the MBTA, negotiating with the MBTA any matter related to this Bid, inspection, testing, shipping, and return shipping of proposed goods samples, or any other expenses incurred by the Bidder prior to date of award, if any, of the Agreement.

4.17 Tax Exemption

The MBTA is exempt from Federal Excise Tax, including Transportation Tax, and will furnish properly executed tax exemption certificates upon request. The MBTA is also exempt from Massachusetts State Sales Tax — Exemption Number E-042-323-989. Such taxes should not be included in Bid prices.

The Bidder alone shall be responsible for payment of all federal, state, and local taxes of all types and kinds applicable to such fees incurred under this Agreement.

4.18 Insurance

The insurance policies that the successful bidder shall carry are outlined in the **attached MBTA Minimum Insurance Requirements** document with this solicitation. The successful bidder shall submit proof of insurance for the requirements detailed at the time of submitting their bid. If in the case they are not available at the time of preparing their Bid, the successful bidder certifies that they will carry such insurance policies and all costs resulting from this are included in their pricing. The successful bidder shall provide proof of insurance within three business days of conditional notice of award.

5. SUBMISSION OF RESPONSE

5.1 Response Submissions

Responses shall be submitted via the COMMBUYS.

Each Response shall be submitted in the following two parts:

a) Technical Response including:

- Bid Cover Letter
- Power of Attorney (as described in Section 5.2 of this RFP)
- Form A: Pre-Award Bidder Evaluation Data Form
- Form B: Technical Response
- Form C: Small Business Program Attestation Form
- Other items as applicable

b) Price Response as a separate document, including:

- Form D: Price Response

The specific requirements for submission of the **Technical Response are set forth in Form B**. The specific requirements for submission of the **Price Response are set forth in Form D**.

If a Bidder is a team, whether or not legally formed, the Bid Cover Letter shall be signed by all parties to the Bidder so that the Response is legally binding upon each member of the Bidder.

Any interlineations, erasures or overwriting in the Response will only be valid if they are initialed by the Authorized Signatories.

Bidders shall submit Responses including all forms and schedules and shall not remove pages from the provided forms. **The Technical Proposal and Price Proposal shall be completely separate documents. Bidder Financials shall be included in Technical Proposal only.**

Any Response which materially fails to meet the Response requirements of the RFP will be found non-responsive without further evaluation unless the evaluation team, at its discretion, determines that the non-compliance is insubstantial and can be corrected. In these cases, the evaluation team may allow the Bidder to make minor corrections to the Response.

5.2 Power of Attorney

Bidder shall enclose a power of attorney in its own form, duly signed by a legally authorized officer of the Bidder authorizing the Authorized Signatories to sign the Response and bind the Bidder to the Response.

5.3 Acceptance of Response

The Response constitutes a binding offer by the Bidder to perform the Scope of Work on the terms of the Response, and the MBTA shall have the right to accept or reject such offer and/or any conditions proposed in full or in part. If the Response is accepted, the Bidder shall conclude the Contract with the MBTA, based on the RFP, any addenda, the Response and any agreed amendments thereto. Until the formal Contract is signed, Bidder has no authority to proceed with the Scope of Work or to incur any costs for which MBTA may be held liable. MBTA shall have no obligations towards Bidder until a formal contract has been entered into.

5.4 Incomplete Response

If Bidder does not fully comply with this RFP, or if the Response is incomplete or vague, the Response may not be considered, unless the MBTA in its absolute discretion decides otherwise.

6. MBTA POLICIES

6.1 Small, Minority, Women, and Other Disadvantaged Businesses

It is the policy of the Commonwealth and the MBTA to ensure non-discrimination in the procurement of goods and services. It is the MBTA's intention to create a level playing field on which all contractors and subcontractors can compete fairly for contracts. The MBTA promotes equity of opportunity in state contracting; and to that end; encourages full participation of certified small, minority, women, and other disadvantaged owned businesses as those terms are defined by the Commonwealth's Supplier Diversity office. The MBTA further recognizes the importance of meaningful partnerships involving subcontracting with certified small minority, women, and other disadvantaged owned businesses.

7. SELECTION PROCESS AND EVALUATION

7.1 Response Opening and Confidentiality

All information received from each Bidder will be treated as confidential information and will not be distributed prior to Contract execution, other than for the purpose of evaluation of the Response.

7.2 Responsiveness Review and Basis of Award

The MBTA reserves the right, in its sole discretion, to determine if a Bid is responsive and the Bidder is responsible. In determining whether a Bidder has the ability to perform successfully under the terms and conditions of the proposed procurement, the MBTA will consider such matters as the Bidder's integrity, compliance with public policy (e.g., EEO record, attainment of DBE goal, debarment status, etc.), record of past performance, and financial and technical resources. Bidder is required to complete **Form A: Pre-Award Bidder Evaluation Data Form**.

Upon receipt, the Technical Proposals will be reviewed for responsiveness to the RFP requirements. The Technical Proposals will be reviewed for (i) deficiencies and minor informalities, irregularities, and apparent clerical mistakes which are unrelated to the substantive content of the Response; (ii) conformance to the RFP instructions regarding organization and format; and (iii) the responsiveness of the Bidder to the requirements set forth in this RFP. The MBTA may request Bidder clarification of any minor informalities, irregularities, and apparent clerical mistakes, after which the MBTA may evaluate the Response, at the MBTA's sole discretion.

Those Technical Proposals not responsive to this RFP may at the MBTA's sole discretion be excluded from further consideration and the Bidder will be so advised.

After completion of the evaluation of the remaining Technical Proposals, the remaining Price Proposals will be reviewed for responsiveness to the RFP requirements. The Price Proposals will be reviewed for (i) deficiencies and minor informalities, irregularities, and apparent clerical mistakes which are unrelated to the substantive content of the Response; (ii) conformance to the RFP instructions regarding organization and format; and (iii) the responsiveness of the Bidder to the requirements set forth in this RFP. The MBTA may request Bidder clarification of any minor informalities, irregularities, and apparent clerical mistakes after which the MBTA may evaluate the Response, at the MBTA's sole discretion.

Those Price Proposals not responsive to this RFP may at the MBTA's sole discretion be excluded from further consideration and the Bidder will be so advised.

The MBTA may also exclude from consideration any Bidder whose Response contains a material misrepresentation.

7.3 Evaluation and Notification

Based on the information provided in each Response, the MBTA will perform Response evaluation and seek clarifications as necessary through requests for clarification or in meetings to be arranged at MBTA discretion. The MBTA will evaluate Responses based on a combination of **Pass/Fail Criteria, Technical Evaluation Criteria, and Price Evaluation Criteria**. The process may, at the MBTA's sole discretion, include (i) requests for additional written information or clarification from any Bidder; (ii) requests for oral interviews; (iii) requests for best and final offers ("BAFOs"); and/or (iv) a negotiations phase.

7.4 Pass/Fail Evaluation

The Proposal will be evaluated based on the Pass/Fail Evaluation Criteria identified below. Each Bidder must obtain a "pass" on all Pass/Fail Evaluation Criteria in order for its Response to be eligible for selection. The MBTA may request Bidder clarification on a Pass/Fail Evaluation Criteria, after which MBTA may re-evaluate the Response, at MBTA's sole discretion.

Criteria	Evaluation Methodology	Evaluation Basis
Legal	Pass/Fail	Form A response
Financial Stability	Pass/Fail	Form A response

7.5 Technical Response and Evaluation

Each criterion will be evaluated considering all of the information included in the Technical Proposal related to the criterion, as well as other information gathered from references, presentations, and on-site visits.

As noted in the Technical Response and Evaluation Criteria below, responses will be evaluated based on the Supplier Diversity Criteria which, will account for 25% of the overall technical scoring. **The MBTA seeks Proposals that incorporate participation by M/WBE's, minority individuals, and women in as many aspects of the services as possible.** MBTA's goal is to select a Contractor who uses creativity to incorporate participation in this contract and is committed to an exceptional and comprehensive program for achieving the diversity and inclusion goals of this RFP as further described.

The Technical Evaluation Criteria are identified and detailed below.

Technical Response and Evaluation Criteria
Relevant experience, capabilities, qualifications, and references
Specific resources to be assigned to the project
Proposed project approach
Supplier Diversity (25% of overall Technical Response scoring)

The Technical Evaluation Criteria will be rated using a numerical rating approach. This will be based on the following scoring scale.

- a) **Excellent (5 Points Awarded):** The Bidder has presented and supported an approach that is considered to significantly exceed stated criteria in a way that is beneficial to the MBTA. This rating indicates a consistently outstanding level of quality, with very little or no risk that this Bidder would fail to meet the requirements of the solicitation. There are no weaknesses.
- b) **Good (4 Points Awarded):** The Bidder has presented and supported an approach that is considered to meet the stated criteria. This rating indicates a generally better than acceptable quality, with little risk that this Bidder would fail to meet the requirements of the solicitation. Weaknesses, if any, are very minor and not material to the Response. Correction of the weaknesses would not be necessary before the Response would be considered further.
- c) **Satisfactory (3 Points Awarded):** The Bidder has presented and supported an approach that is considered to possibly meet the stated criteria. This rating indicates a level of risk to the MBTA. Weaknesses exist but may be corrected through requests for clarification.
- d) **Fair (2 Point Awarded):** The Bidder has presented and supported an approach that fails to meet stated criteria and would pose a clear risk to the MBTA. The issues may be susceptible to correction through major and lengthy discussions. Such a response is considered marginal in terms of the basic content or amount of information provided for evaluation.
- e) **Poor (1 Points Awarded):** The Bidder has presented and supported an approach that indicates significant weaknesses or unacceptable quality or fails to include evidence that it is capable of providing the services requested. The Response fails to meet the stated criteria or lacks essential information. There is no reasonable likelihood of success; weaknesses are so major or extensive that a major revision to the Response would be necessary.

Bidders must obtain a minimum average score of 2 from the Selection Committee on each Technical Evaluation Criterion and rank among the top three highest Technical Proposal Scores in order to qualify for further evaluation, including Price Proposal Evaluation.

7.6 Price Proposal Evaluation

Price will be evaluated in combination with The Technical Evaluation Criteria, including Supplier Diversity, listed above. While the MBTA seeks to minimize costs, the selection of a winning Proposal will be made on a best-value basis.

7.7 Basis of Award: Best – Value Proposal

Bidder is advised that the MBTA shall not be bound to accept the lowest priced Response or the Response with the highest technical Proposal Score. The selection will be made on a best-value basis, evaluating price along with other factors. For purposes of this procurement, all evaluation factors other than price, when combined, are more important than the lowest price. Therefore, the MBTA may decline to select the lowest-priced, technically acceptable Proposal, if the MBTA determines that another, higher-priced Proposal demonstrates sufficient additional technical merit to justify the additional cost. Similarly, price will be an important factor in differentiating between Proposals of comparable technical merit.

In order to make a selection, the MBTA will determine whether the Responses are responsive and evaluate both the Pass/Fail Evaluation Criteria and Technical Evaluation Criteria, and assign an overall Technical Proposal Score. After the determination of the Technical Proposal Score, the MBTA will evaluate the Price Evaluation Criteria of the remaining Bidders and, if applicable, determine the best value by analyzing whether the perceived benefits of the higher priced Response merit the additional cost.

The MBTA will not select any Bidder that receives a rating of fail on any Pass/Fail Evaluation Criteria or less than an average of 2 on any Technical Evaluation Criteria. The MBTA will not select any Bidder that the MBTA determines has submitted a non-responsive Technical or Price Proposal or to have submitted any pricing information that is not reasonable. The MBTA reserves the right to accept or reject, at its sole discretion, any or all Responses in full or in part.

7.8 Successful Bidder

The successful Bidder will be posted in COMBUYS. All unsuccessful Bidders shall immediately return all confidential information to the MBTA.

7.9 MBTA Reserved

In connection with this RFP, the MBTA reserves to itself all rights (which rights shall be exercisable by the MBTA in its sole discretion) available to it under applicable laws, including without limitation, with or without cause and with or without notice, the right to:

- a) Modify the RFP process in its sole discretion to address applicable law and/or the best interests of the MBTA.
- b) Develop the work to be performed under the Contract in any manner that it, in its sole discretion, deems necessary. If the MBTA is unable to negotiate a Contract to its satisfaction with a Bidder, it may negotiate with the Bidder with the next highest ranked proposal, terminate this RFP and pursue other developments or solicitations relating to the work to be performed under the Contract, or exercise such other rights under the provisions of Massachusetts law as it deems appropriate.
- c) Cancel this RFP in whole or in part at any time prior to the execution by the MBTA of a Contract, without incurring any cost, obligations, or liabilities.
- d) Issue a new Request for Proposals after withdrawal of this RFP.
- e) Not select any Bidder or cancel this procurement.
- f) Reject any and all submittals and Responses received at any time.
- g) Modify all dates set or projected in this RFP.
- h) Terminate evaluations of Responses received at any time.

- i) Exclude any potential Bidder from submitting any response to the RFP based on failure to comply with any requirements of those documents.
- j) Suspend and terminate Contract negotiations at any time, elect not to commence Contract negotiations with any responding Bidder, and engage in negotiations with the Bidder with the next highest ranked proposal if negotiations are unsuccessful with the apparent successful Bidder.
- k) Issue addenda, supplements, and modifications to this RFP.
- l) Appoint an Evaluation Team to evaluate Responses, make recommendations to the MBTA and MassDOT Boards of Directors, and seek the assistance of MBTA, MassDOT, and consultant technical experts in Response evaluations.
- m) Require confirmation or clarification of information furnished by a Bidder, require revised or additional information from a Bidder concerning its Response, and require additional information to clarify the Response submitted in response to this RFP.
- n) Conduct presentations with Bidders, identify a short-list of Bidders, and conduct on-site visits at Bidder facilities.
- o) Declare a competitive range, conduct discussions, and request Response revisions and best and final offers.
- p) Seek or obtain data from any source that has the potential to improve the understanding and evaluation of the responses to this RFP.
- q) Add or delete Bidder responsibilities from the information contained in this RFP.
- r) Waive deficiencies in a Response, accept and review a non-conforming Response, or permit clarifications, revisions, or supplements to a Response.
- s) Negotiate with a Bidder without being bound by any provision in its Response, or choose to award and/or execute the Contract without negotiations.
- t) Disqualify any Bidder that changes its submittal without MBTA approval.
- u) Disqualify any Bidder under this RFP for violating any rules or requirements of the procurement set forth in this RFP or in any other communication from MBTA.
- v) Delay issuance of notice to proceed after execution of the Contract.
- w) Conduct all or any portion of the Scope of Work itself.
- x) Exercise any other right reserved or afforded to the MBTA under this RFP.

This RFP does not commit the MBTA to enter into a Contract or proceed with the procurement described herein. The MBTA assumes no obligations, responsibilities, and liabilities, fiscal or otherwise, to reimburse all or part of the costs incurred or alleged to have been incurred by parties considering a response to and/or responding to this RFP. All such costs shall be borne solely by each Bidder.

In no event shall the MBTA be bound by, or liable for, any obligations with respect to the work to be performed under the Contract until such time (if at all) as the Contract, in form and substance satisfactory to the MBTA, has been executed and authorized by the MBTA and, then, only to the extent set forth therein; provided, however, that the foregoing disclaimer in this sentence shall not apply to the obligations of the MBTA to the Bidders during the procurement process, which obligations are expressly set forth in this RFP. In submitting a Response to the RFP, each Bidder is specifically acknowledging these disclaimers.

7.10 Appeal / Protest Procedures

Bid appeals / protests relative to this procurement will be reviewed and adjudicated in accordance with the MBTA's Appeals / Protest Procedure - Goods & Services. A copy of this procedure is available by contacting the Buyer assigned to this procurement and available online at www.mbta.com.

8. CONTRACT STRUCTURE

The contract ("Contract") between the MBTA and the winning Bidder shall be formed by the following sections ("Sections") of RFP #7-23 in order of precedence.

- A. Any change orders or amendments, the most recent having precedence
- B. Memorandum of Contract
- C. Standard Contract and Terms & Conditions
- D. Scope of Work
- E. Insurance Requirements
- F. Contractor Proposal
- G. Contractor Fee for Service; Pricing & Invoicing

Enclosure 1 – Bid Cover Letter

Massachusetts Bay Transportation Authority
 Attention: Procurement and Logistics Department
 10 Park Plaza, Suite 2810
 Boston, MA 02116

Instructions: Bidders shall complete the Bid Cover Letter below with their company name and completed check boxes to indicate the bid documents that constitute their bid. **All responses are to be submitted to the MBTA via COMMBUYS.**

RFP #:	7-23
Project Name:	MBTA CAPITAL PROGRAMS – CONTRACTOR OVERSIGHT SERVICES.
Bidder (Company Name):	

The undersigned Bidder having carefully examined and understood the documents included in the Request for Proposals (“RFP”), hereby offers to MBTA the “*Bid*” as contained in the following responses enclosed with this letter:

Forms	Check to Indicate Submitted Bid Documents
Form A: Pre-Award Bidder Evaluation Form	<input type="checkbox"/>
Form B: Technical Response	<input type="checkbox"/>
Form C: Small Business Attestation Program	<input type="checkbox"/>
Form D: Pricing Response (as a separate attachment)	<input type="checkbox"/>
Signed Section 10.1 Massachusetts Bay Transportation Authority Standard Terms and Conditions	<input type="checkbox"/>
Proof of Insurance	<input type="checkbox"/>

We confirm that our Bid is in exact accordance with the solicitation with no exceptions to, or comments upon, the solicitation documents. We confirm that the submission of our Bid with the signature below makes all certifications as outlined in the solicitation documents. This Bid shall constitute a binding offer open for acceptance by the MBTA.

We confirm that this Bid has been prepared and is compliant with the solicitation instructions and agree to conduct ourselves in accordance with the solicitation. We confirm receipt of all addenda related to this solicitation. We confirm the |120 days| Acceptance Period of this Proposal.

The undersigned certifies under penalties of perjury that this bid is in all respects bona fide, fair and made

without collusion or fraud with any other person. As used in this paragraph the word “person” shall mean any natural person, joint venture, partnership, corporation or other business or legal entity.

The undersigned are authorized to sign on behalf of and to bind _____
(include Bidder’s name) to the provisions of this Bid.

Bidder (company name):

Authorized Representative Name:

(BLOCK LETTERS)

Authorized Representative’s Signature:

Title:

Date:

Form A: Pre-Award Bidder Evaluation Data Form

Pre-Award Bidder Evaluation Data			
Name of Firm:			
Federal Identification Number:			
Legal Address:			
Contact Name:			
Telephone Number:			
Email:			
Please select one: <input type="checkbox"/> Individual <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation <input type="checkbox"/> Joint Venture			
Date Organized:		State Incorporated:	
Names of Officers or Partners:			
Please provide details of any litigation, suits, or court action taken or pending against Bidder below:			
Please provide the following information that demonstrates that the Bidder together with its selected Affiliates and or Subcontractors has the required capabilities to successfully execute the Work. Please submit as attachments the following requested documents:			Check Attachment
Audited financial statements for the last 3 financial years			<input type="checkbox"/>
Attach, if applicable, a list of similar current contracts that demonstrates your technical proficiency, each with contract value amount, name of contracting party, type of work			<input type="checkbox"/>

completed, and percentage of work complete to date.	
Attach, if applicable, a list of all principal subcontractors and the percentage and nature and value of work each will perform on this project. Principal items of work shall include, but not be limited to, those listed in the solicitation.	<input type="checkbox"/>

Please provide answers to the following questions:	Check Answer
Do you have any outstanding indebtedness or unsecured loans or debts or trading losses not reported within the financial reports?	Yes <input type="checkbox"/> No <input type="checkbox"/>
Do you have any contracts over the last two years that were assessed liquidated damages or termination for non-performance?	Yes <input type="checkbox"/> No <input type="checkbox"/>

If the Bidder or subcontractor is a joint venture, submit this Pre-Award Bidder Evaluation Data form for each member of the joint venture.

Form B: Technical Response

The requirements set forth here describe the minimum technical information to be submitted by the Bidder to the MBTA as part of the Response. The Bid shall enable the MBTA to assess and evaluate the technical components of the Bid. Wherever possible, deliverables below should be representative of work similar in context to the Scope of Work in Section 2.

The Technical Response shall have the following general requirements:

- PDF format
- Documents provided should be free from hyperlinks and external references that would direct the reader to any information beyond the submitted Technical Response
- Bidder's Technical Response shall include complete and accurate responses to this RFP and shall consist of the following sections, with the associated page limits. The MBTA may choose to ignore materials submitted beyond the page limits specified below:

Section		Page Limit
B1	Relevant experience, capabilities, qualifications, and references	10
B2	Staffing plan	20
B3	Proposed project approach	10
B4	Supplier Diversity	5

Responses that exceed the above page limits may not be reviewed.

B1 – Bidder Experience, Capabilities, Qualifications, and References

Bidder shall clearly outline their experience and past performance that supports their ability deliver the Project, and should be sure to provide details on the components listed below:

1. Introduction to the Firm

Bidders shall briefly summarize their firm's business and core competencies, including business lines and services provided, firm tenets and culture, guiding principles, and/or approach to client engagement. Summary should also include overall employees and employees attributed to providing the services similar to the content of this RFP.

2. Description of Prior Experience

Bidders shall submit an experience statement from previous recent contracts of similar scope that demonstrate their ability to manage and deliver the Scope of Work. This information should cover:

- Customer Name and identifying information
- Project description
- Description of project management approach
- Timeline of Project
- Number of resources provided to the project from the Bidder's firm

- Roles fulfilled on the project by the Bidder's firm
- 3. Provide a list of similar current contracts that demonstrates your technical proficiency, each with contract value amount, name of contracting party, type of work completed, and percentage of work complete to date.
- 4. Qualifications: Provide examples of experience with the following, including project description and outcome including any notable success factors or lessons learned.
 - Project management, particularly for multi-year projects with multiple overlapping workstreams and/or projects involving both client resources and third-party contractors
 - Projects with governmental regulatory agencies as stakeholders, especially projects involving high-profile corrective action plans
 - Public-facing communications and reporting on extremely high-visibility projects
 - Management of cross-departmental projects for large, complex organizations with competing needs and priorities

5. References

Provide three references and contact information from the contracts listed above, as well as for any contracts Bidder has with the Commonwealth of Massachusetts.

Bidders must include the name, title, organization, phone number and e-mail address of the reference.

B2 – Staffing Plan

1. Provide a staffing plan with an organization chart. The plan should address all areas of Contractor performance. Bidder's plan should address specific resources assigned to this project, whether they are full-time or part-time as well as the estimated hours for each resource needed for the duration of the project.
2. Describe the roles, responsibilities, credentials, and experience of any/all subcontractors that the Bidder proposes to use on an ongoing basis for any required function or task.
3. Provide resumes/descriptions of experience for the personnel who will be assigned to the project.

B3 – Proposed Project Approach

Bidder shall clearly outline their project approach describing how Bidder will fulfill each component in Sections 2 Scope of Work and specifically the deliverables. Bidder should be sure to provide details on the components listed below:

1. Project Management Methodology

Bidder shall describe the project management methodology it will use to manage the project activities and deliverables, including but not limited to: Describe the project standards, controls, and procedures that will be used to ensure quality

throughout the delivery of the Scope of Work, as well as the method(s) to be used to provide project status and issue resolution.

2. Interaction with MBTA resources

Bidders shall describe in detail the interaction required with MBTA resources, including estimated time commitment and the resource titles, if known, or areas of expertise.

3. Subcontractor Plan

Bidders shall provide details on any subcontractors that are being proposed in the response, inclusive of information on whether the subcontracting relationship is new or existing.

4. Alternate Approaches

Bidders shall propose any alternate approach(es) to the project that could accelerate completion.

B4 – Supplier Diversity

Bidder shall outline its approach to Supplier Diversity including, at a minimum, the following:

1. Provide a specific commitment (dollar amount and percentage) on this contract to be spent with all certified SDP Partners on a Massachusetts fiscal year (July 1st - June 30th) basis.
2. What creative partnerships have you established with diverse vendors? What creative partnerships could you leverage with diverse vendors specific to this procurement?
3. Submit your company's diversity program relative to Massachusetts.

Form C: Small Business Program Attestation Form

To qualify under the State's Small Business Program, the following criteria apply:

- Principal place of business in Massachusetts
- Business operating for at least one year
- Currently employs a combined total of 50 or fewer full-time equivalents in all locations
- Gross annual revenues of \$15 million or less based on a 3-year average

Please select one:

☐ YES, the above criteria apply ☐ NO, the above criteria do not apply

If YES, please complete the fields below. If NO, complete 'Name of Firm' field below only.
Return the form with the bid submission.

Name of Firm:	
Federal Identification Number:	
Legal Address:	
Contact Name:	
Telephone Number:	
Email:	
Please select one: <input type="checkbox"/> Individual <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation <input type="checkbox"/> Joint Venture	
Total Number of Full-Time Employees:	
Date Organized:	
State Incorporated:	
Please provide supporting documentation regarding gross annual revenues of \$15 million or less based on a 3-year average (attachments acceptable):	

Form D: Requested RFP Pricing Form – **SUBMIT SEPERATELY**

Bidders are required to quote firm hourly rate(s). The quoted prices shall be inclusive of ancillary charges including but not limited to prevailing wages, tooling, equipment, transportation costs, customs, duty charges, and other associated charges. Bidders shall quote only on goods and services in strict accordance with the specifications / requirements.

Below is for example only. Please see Attachment 2-Form D: Price Proposal.

Form D: Price Proposal

RFP 7-23

COMMBUYS Bid# 22-1206-MBTA-MBTA-83240

Directions

Vendors are requested to fill in the highlighted cells.

All vendors bidding on the Rulebook Assessment project must fill out this table

Rate Card - This is the rate card for any additional work associated with additional projects in which the vendor will assist the MBTA if needed. Please fill in the highlighted cells for any future resources.

Basis of Award will take into consideration the billing rates as well as the total cost

Company Name

Rate Card

Person
Job Title
Name
Rate Per Hour

#1	#2	#3	#4	#5	#6	#7	#8

9. MBTA STANDARD CONTRACT AND TERMS AND CONDITIONS INSTRUCTIONS FOR VENDORS

9.1 MBTA Standard Contract Instructions (Section 9.0)

Bidder shall review and sign Section 10.1 MBTA Standard Contract Terms and Conditions to submit with their bid. Bidders Do Not sign Section 10.0 Massachusetts Bay Transportation Authority Standard Contract upon submission of their bid. When the MBTA plans to award contract, the MBTA buyer will fill out Section 10.0 Massachusetts Bay Transportation Authority Standard Contract and send it to the successful bidder for signature.

9.2 MBTA Standard Terms & Conditions Instructions (Section 9.0)

Each bidder must review and sign Section 10.1 Massachusetts Bay Transportation Authority Standard Terms and Conditions and submit the signed Section 10.1 with their bid for the bid to be responsive and complete.

The MBTA does not encourage attempts to negotiate the Section 10.0 Massachusetts Bay Transportation Authority Standard Contract Terms & Conditions. Many of these provisions are required by law; others are longstanding MBTA policy / practice. Accordingly, Bidders / proposers should only redline or object to provisions that they find absolutely unacceptable. Any rejection or modification of these provisions may disqualify a Bid / proposal as being non-responsive or non-compliant.

10. Massachusetts Bay Transportation Authority Standard Contract

CONTRACTOR LEGAL NAME: (and d/b/a):	Massachusetts Bay Transportation Authority (MBTA)
Legal Address: (W-9, W-4,T&C):	10 Park Plaza Boston, MA 02116
Contract Manager:	Billing Address (if different):
E-Mail:	Contract Manager:
Phone: Fax:	Email: @MBTA.COM
Contractor Vendor Code:	Phone: 617-222-
Vendor Code Address ID (e.g. "AD001"): AD. (Note: The Address Id Must be set up for EFT payments.)	RFR/RFP/IFB/Procurement or Other ID Number: RFP 7-23

<p style="text-align: center;"><u>NEW CONTRACT</u></p> <p>PROCUREMENT OR EXCEPTION TYPE: (Check one option only)</p> <p><input type="checkbox"/> Statewide Contract (OSD or an OSD-designated Department)</p> <p><input type="checkbox"/> Collective Purchase (Attach OSD approval, scope, budget)</p> <p><input checked="" type="checkbox"/> MBTA Procurement Attach RFR/RFP/IFB and Response or other procurement supporting documentation</p> <p><input type="checkbox"/> Emergency Contract (Attach justification for emergency, scope, budget)</p> <p><input type="checkbox"/> Contract Employee (Attach <u>Employment Status Form</u>, scope, budget)</p> <p><input type="checkbox"/> Legislative/Legal or Other: (Attach authorizing language/justification, scope and budget)</p>	<p style="text-align: center;"><u>CONTRACT AMENDMENT</u></p> <p>Enter Current Contract End Date <u>Prior</u> to Amendment: , 20 .</p> <p>Enter Amendment Amount: \$. (or "no change")</p> <p>AMENDMENT TYPE: (Check one option only. Attach details of Amendment changes.)</p> <p><input type="checkbox"/> Amendment to Scope or Budget (Attach updated scope and budget)</p> <p><input type="checkbox"/> Interim Contract (Attach justification for Interim Contract and updated scope/budget)</p> <p><input type="checkbox"/> Contract Employee (Attach any updates to scope or budget)</p> <p><input type="checkbox"/> Legislative/Legal or Other: (Attach authorizing language/justification and updated scope and budget)</p>
---	--

The MBTA Terms and Conditions (T&C) have been executed, and are incorporated by reference into this Contract.

COMPENSATION: (Check ONE option): The MBTA certifies that payments for authorized performance accepted in accordance with the terms of this Contract

☐ **Rate Contract** (No Maximum Obligation. Attach details of all rates, units, calculations, conditions or terms and any changes if rates or terms are being amended.)

☐ **Maximum Obligation Contract** Enter Total Maximum Obligation for total duration of this Contract (or **new** Total if Contract is being amended). \$ | |.

PROMPT PAYMENT DISCOUNTS (PPD): MBTA payments are issued through EFT 45 days from invoice receipt. Contractors requesting **accelerated** payments must identify a PPD as follows: Payment issued within 10 days | |% PPD; Payment issued within 15 days | |% PPD; Payment issued within 20 days | |% PPD; Payment issued within 30 days | |% PPD. If PPD percentages are left blank, identify reason: agree to standard 45 day cycle only initial payment (subsequent payments scheduled to support standard EFT 45 day payment cycle. See Prompt Pay Discounts Policy.)

BRIEF DESCRIPTION OF CONTRACT PERFORMANCE or REASON FOR AMENDMENT: (Enter the Contract title, purpose, fiscal year(s) and a detailed description of the scope of performance or what is being amended for a Contract Amendment. Attach all supporting documentation and justifications.)

| |

ANTICIPATED START DATE: (Complete ONE option only) MBTA and Contractor certify for this Contract, or Contract Amendment, that Contract obligations:

☒ 1. May be incurred as of the Effective Date (latest signature date below) and **no** obligations have been incurred **prior** to the Effective Date.

☐ 2. May be incurred as of | |, 20 |, a date **LATER** than the Effective Date below and **no** obligations have been incurred **prior** to the Effective Date.

☐ 3. were incurred as of | |, 20 |, a date **PRIOR** to the Effective Date below, and the parties agree that payments for any obligations incurred prior to the Effective Date are authorized to be made either as settlement payments or as authorized reimbursement payments, and that the details and circumstances of all obligations under this Contract are attached and incorporated into this Contract. Acceptance of payments forever releases the MBTA from further claims related to these obligations.

CONTRACT END DATE: Contract performance shall terminate as of | |, 20 |, with no new obligations being incurred after this date unless the Contract is properly amended, provided that the terms of this Contract and performance expectations and obligations shall survive its termination for the purpose of resolving any claim or dispute, for completing any negotiated terms and warranties, to allow any close out or transition performance, reporting, invoicing or final payments, or during any lapse between amendments.

CERTIFICATIONS: Notwithstanding verbal or other representations by the parties, the "**Effective Date**" of this Contract or Amendment shall be the latest date that this Contract or Amendment has been executed by an authorized signatory of the Contractor, the MBTA, or a later Contract or Amendment Start Date specified above, subject to any required approvals. The Contractor makes all certifications required under the attached Contractor Certifications (incorporated by reference if not attached hereto) under the pains and penalties of perjury, agrees to provide any required documentation upon request to support compliance, and agrees that all terms governing performance of this Contract and doing business in Massachusetts are attached or incorporated by reference herein according to the following hierarchy of document precedence, the applicable MBTA Terms and Conditions, this Standard Contract Form including the Instructions and Contractor Certifications, the Request for Response (RFR), Request for Proposal (RFP), Invitation for Bid (IFB) or other solicitation, the Contractor's Response, and additional negotiated terms, provided that additional negotiated terms will take precedence over the relevant terms in the RFR/RFP/IFB and the Contractor's Response only if made using the process outlined in 801 CMR 21.07, incorporated herein, provided that any amended RFR/RFP/IFB or Response terms result in best value, lower costs, or a more cost effective Contract.

<p>AUTHORIZING SIGNATURE FOR THE CONTRACTOR:</p> <p>X: . Date: .</p> <p>(Signature and Date Must Be Handwritten At Time of Signature or utilize an MBTA approved electronic signature)</p> <p>Print Name: .</p>	<p>AUTHORIZING SIGNATURE FOR THE MBTA:</p> <p>X: . Date: .</p> <p>(Signature and Date Must Be Handwritten At Time of Signature or utilize an MBTA approved electronic signature)</p> <p>Print Name: .</p>
---	---

10.1 Standard Terms and Conditions

Upon execution by the Contractor, these Terms and Conditions will be incorporated by reference into any Contract executed by the Contractor and the Massachusetts Bay Transportation Authority (MBTA), in the absence of a superseding law or regulation requiring a different Contract form. Performance shall include services rendered, obligations due, costs incurred, commodities and deliverables provided and accepted by the MBTA, programs provided or other commitments authorized under a Contract. A deliverable shall include any tangible product to be delivered as an element of performance under a Contract. The MBTA is entitled to ownership and possession of all deliverables purchased or developed with MBTA funds.

10.1.1 Contract Effective Start Date

Notwithstanding verbal or other representations by the parties, or an earlier start date indicated in a Contract, the effective start date of performance under a Contract shall be the date a Contract has been executed by an authorized signatory of the Contractor, the MBTA, a later date specified in the Contract or the date of any approvals required by law or regulation, whichever is later.

10.1.2 Payments and Compensation

The Contractor shall only be compensated for performance delivered and accepted by the MBTA in accordance with the specific Terms and Conditions of a Contract. Overpayments shall be reimbursed by the Contractor or may be offset by the MBTA from future payments in accordance with state finance law. Acceptance by the Contractor of any payment or partial payment, without any written objection by the Contractor, shall in each instance operate as a release and discharge of the MBTA from all claims, liabilities or other obligations relating to the performance of a Contract.

10.1.3 Contractor Payment Mechanism

All Contractors will be paid using the MBTA invoicing system and Contractor will submit its invoice with all supporting documentation as prescribed in a Contract. The MBTA shall review and return rejected invoices within fifteen (15) days of receipt with a written explanation for rejection, provided that payment periods listed in a Contract of less than forty-five (45) days from the date of receipt of an invoice shall be effective only to enable the MBTA to take advantage of early payment incentives and shall not subject any payment made within the forty-five (45) day period to a penalty.

10.1.4 Contract Termination or Suspension

A Contract shall terminate on the date specified in a Contract, unless this date is properly amended in accordance with all applicable laws and regulations prior to this date, or unless terminated or suspended under this Section upon prior written notice to the Contractor. The MBTA may terminate a Contract without cause and without penalty, or may terminate or suspend a Contract if the Contractor breaches any material term or condition or fails to perform or fulfill any material obligation required by a Contract, or in the event of an elimination of an appropriation or availability of sufficient funds for the purposes of a Contract, or in the event of an unforeseen public emergency mandating immediate MBTA action. Upon immediate notification to the other party, neither the MBTA nor the Contractor shall be deemed to be in breach for failure or delay in performance due to Acts of God or other causes factually beyond their control and without their fault or negligence. Subcontractor failure to perform or price increases due to market fluctuations or product availability will not be deemed factually beyond the Contractor's control.

10.1.5 Written Notice

Any notice shall be deemed delivered and received when submitted in writing in person or when delivered by any other appropriate method evidencing actual receipt by the MBTA or the Contractor. Any written notice of termination or suspension delivered to the Contractor shall state the effective date and period of the notice, the reasons for the termination or suspension, if applicable, any alleged breach or failure to perform, a reasonable period to cure any alleged breach or failure to perform, if applicable, and

any instructions or restrictions concerning allowable activities, costs, or expenditures by the Contractor during the notice period.

10.1.6 Record-keeping and Retention, Inspection of Records

The Contractor shall maintain records, books, files, and other data as specified in a Contract and in such detail as shall properly substantiate claims for payment under a Contract, for a minimum retention period of seven (7) years beginning on the first day after the final payment under a Contract, or such longer period as is necessary for the resolution of any litigation, claim, negotiation, audit or other inquiry involving a Contract. The MBTA shall have access, as well as any parties identified under Executive Order 195, during the Contractor's regular business hours and upon reasonable prior notice, to such records, including on-site reviews and reproduction of such records at a reasonable expense.

10.1.7 Assignment

The Contractor may not assign or delegate, in whole or in part, or otherwise transfer any liability, responsibility, obligation, duty or interest under a Contract without the written approval of the MBTA, with the exception that the Contractor shall be authorized to assign present and prospective claims for money due to the Contractor pursuant to a Contract in accordance with M.G.L. C. 106, §9-318. The Contractor must provide sufficient notice of assignment and supporting documentation to enable the MBTA to verify and implement the assignment. Payments to third party assignees will be processed as if such payments were being made directly to the Contractor and these payments will be subject to intercept, offset, counter-claims or any other MBTA rights which are available to the MBTA against the Contractor. The sale of fifty percent (50%) or more of the equity ownership of a Contractor shall be considered an assignment requiring the prior written approval of the MBTA. Impermissible assignments shall be null and void.

10.1.8 Subcontracting By Contractor

Any subcontract entered into by the Contractor for the purposes of fulfilling the obligations under a Contract must be in writing, authorized in advance by the MBTA and shall be consistent with and subject to the provisions of these MBTA Terms and Conditions and a Contract. Subcontracts will not relieve or discharge the Contractor from any duty, obligation, responsibility or liability arising under a Contract. The MBTA is entitled to copies of all subcontracts and shall not be bound by any provisions contained in a subcontract to which it is not a party. Subcontracts shall note that the MBTA is not a party to the subcontract. Failure to promptly pay a Sub-Contractor for work performed where the Contractor has been paid by the MBTA shall constitute a material breach of the Contract between MBTA and Contractor.

10.1.9 Affirmative Action, Non-Discrimination in Hiring and Employment

The Contractor shall comply with all federal and state laws, rules and regulations promoting fair employment practices or prohibiting employment discrimination and unfair labor practices and shall not discriminate in the hiring of any applicant for employment nor shall any qualified employee be demoted, discharged or otherwise subject to discrimination in the tenure, position, promotional opportunities, wages, benefits or terms and conditions of their employment because of race, color, national origin, ancestry, age, sex, religion, disability, handicap, sexual orientation or for exercising any rights afforded by law. The Contractor commits to purchasing supplies and services from certified minority or women-owned businesses, small businesses or businesses owned by socially or economically disadvantaged persons or persons with disabilities.

10.1.10 Indemnification

The Contractor shall release, defend (at the MBA's option), indemnify and hold harmless the MBTA, its agents, officers and employees (collectively the "indemnified parties") against any and all claims, demands, liabilities, judgments, penalties, costs, expenses (including attorneys' fees and experts' fees), and damages ("Claims") based on or arising out of any actual or alleged loss or injury (including death) to

persons or damage to real or tangible property, or patent or copyright infringement, that are caused or alleged to be caused, in whole or in part, by, or arising out of the acts or omissions of the Contractor, its agents, servants, employees or subcontractors. The MBTA agrees to notify the Contractor in writing within a reasonable period of time of the assertion of any Claim for which the Contractor has agreed to indemnify the MBTA pursuant to this section. The MBTA shall not be liable for any costs incurred by the Contractor arising under this section. If the MBTA incurs any cost or fees for attorneys or experts, or any other costs or expense, to enforce its right to indemnification or defense under this section, the Contractor shall fully reimburse the MBTA for such costs, fees and expense.

10.1.11 Waivers

Forbearance or indulgence in any form or manner by a party shall not be construed as a waiver, nor shall it in any way limit the legal or equitable remedies available to that party. No waiver by either party of any default or breach shall constitute a waiver of any subsequent default or breach.

10.1.12 Risk of Loss

The Contractor shall bear the risk of loss for any Contractor materials used for a Contract and for all deliverables, MBTA personal or other data which is in the possession of the Contractor or used by the Contractor in the performance of a Contract until possession, ownership and full legal title to the deliverables are transferred to and accepted by the MBTA.

10.1.13 Forum, Choice of Law and Mediation

Any actions arising out of a Contract shall be governed by the laws of Massachusetts, and shall be brought and maintained in a State or federal court in Massachusetts which shall have exclusive jurisdiction thereof. The MBTA and the Contractor may agree to voluntary mediation through the Massachusetts Office of Dispute Resolution (MODR) of any Contract dispute and will share the costs of such mediation. No legal or equitable rights of the parties shall be limited by this Section.

10.1.14 Interpretation, Severability, Conflicts with Law, Integration

Any amendment or attachment to any Contract which contains conflicting language or has the effect of a deleting, replacing or modifying any printed language of these MBTA Terms and Conditions, shall be interpreted as superseded by the official printed language. If any provision of a Contract is found to be superseded by state or federal law or regulation, in whole or in part, then both parties shall be relieved of all obligations under that provision only to the extent necessary to comply with the superseding law, provided however, that the remaining provisions of the Contract, or portions thereof, shall be enforced to the fullest extent permitted by law. All amendments must be executed by the parties in accordance with Section 10.0 of these MBTA Terms and Conditions (*Section 10, pages 30 -40.*) The printed language of the Standard Contract Form (*Section 10.0, page 29*), which incorporates by reference these MBTA Terms and Conditions, shall supersede any conflicting verbal or written agreements relating to the performance of a Contract, or attached thereto, including contract forms, purchase orders or invoices of the Contractor. The order of priority of documents to interpret a Contract shall be as follows: any applicable federal provisions, any supplemental provisions, any negotiated terms and conditions allowable pursuant to law or regulation; the printed language of the MBTA Terms and Conditions; the Standard Contract; the MBTA's Request for Response/Proposal/Bid (RFR/RFP/IFB) solicitation document; and the Contractor's Response to the RFR/RFP/IFB solicitation, excluding any language stricken by the MBTA as unacceptable.

10.1.15 Insurance to be Carried by the Contractor

The successful Contractor shall submit proof of insurance for the requirements detailed in the attached **MBTA Minimum Insurance Requirements** enclosure with this solicitation. The attachment will be included with the solicitation posting on COMMBUYS. If in the case they are not available at the time of preparing their Bid, the successful Contractor certifies that they will carry such insurance policies and all

costs resulting from this are included in their pricing. The successful Contractor shall provide proof of insurance within three business days of conditional notice of award.

10.1.16 Contractor Certifications and Legal References

The Contractor makes all certifications required under this Contract under the pains and penalties of perjury, and agrees to provide any required documentation upon request to support compliance, and agrees that all terms governing performance of this Contract and doing business in Massachusetts are attached or incorporated by reference herein.

10.1.16.1 MBTA and Contractor Ownership Rights

The Contractor certifies and agrees that the MBTA is entitled to ownership and possession of all “deliverables” purchased or developed with Contract funds.

10.1.16.2 Qualifications

The Contractor certifies it is qualified and shall at all times remain qualified to perform this Contract; that performance shall be timely and meet or exceed industry standards for the performance required, including obtaining requisite licenses, registrations, permits, resources for performance, and sufficient professional, liability; and other appropriate insurance to cover the performance. If the Contractor is a business, the Contractor certifies that it is listed under the Secretary of State’s website as licensed to do business in Massachusetts, as required by law.

10.1.16.3 Business Ethics and Fraud, Waste and Abuse Prevention

The Contractor certifies that performance under this Contract, in addition to meeting the terms of the Contract, will be made using ethical business standards and good stewardship of taxpayer and other public funding and resources to prevent fraud, waste and abuse.

10.1.16.4 Collusion

The Contractor certifies that this Contract has been offered in good faith and without collusion, fraud or unfair trade practices with any other person, that any actions to avoid or frustrate fair and open competition are prohibited by law, and shall be grounds for rejection or disqualification of a Response or termination of this Contract.

10.1.16.5 Public Records and Access

The Contractor shall provide full access to records related to performance and compliance to the MBTA pursuant to G.L. c. 11, s.12 for seven (7) years beginning on the first day after the final payment under this Contract or such longer period necessary for the resolution of any litigation, claim, negotiation, audit or other inquiry involving this Contract. Access to view Contractor records related to any breach or allegation of fraud, waste and/or abuse may not be denied and Contractor cannot claim confidentiality or trade secret protections solely for viewing but not retaining documents. Routine Contract performance compliance reports or documents related to any alleged breach or allegation of non-compliance, fraud, waste, abuse or collusion may be provided electronically and shall be provided at Contractor’s own expense. Reasonable costs for copies of non-routine Contract related records shall not exceed the rates for public records under the Massachusetts Public Records Law.

10.1.16.6 Debarment

The Contractor certifies that neither it nor any of its subcontractors are currently debarred or suspended by the federal or state government under any law or regulation.

10.1.16.7 Applicable Laws

The Contractor shall comply with all applicable state laws and regulations including but not limited to the applicable Massachusetts General Laws; Code of Massachusetts Regulations 801 CMR 21.00

(Procurement of Commodity and Service Procurements); M G.L. c. 66A; and the Massachusetts Constitution Article XVIII if applicable.

10.1.16.8 Tax Law Compliance

The Contractor certifies under the pains and penalties of perjury tax compliance with Federal tax laws; state tax laws including but not limited to G.L. c. 62C, G.L. c. 62C, s. 49A; compliance with all state tax laws, reporting of employees and contractors, withholding and remitting of tax withholdings and child support and is in good standing with respect to all state taxes and returns due; reporting of employees and contractors under G.L. c. 62E, withholding and remitting child support including G.L. c. 119A, s. 12; TIR 05-11; New Independent Contractor Provisions and applicable TIRs.

10.1.16.9 Bankruptcy, Judgments, Potential Structural Changes, Pending Legal Matters and Conflicts

The Contractor certifies it has not been in bankruptcy and/or receivership within the last three calendar years, and the Contractor certifies that it will immediately notify the Department in writing **at least 45 days prior** to filing for bankruptcy and/or receivership, any potential structural change in its organization, or if there is **any risk** to the solvency of the Contractor that may impact the Contractor's ability to timely fulfill the terms of this Contract or Amendment. The Contractor certifies that at any time during the period of the Contract the Contractor is required to affirmatively disclose in writing to the Department Contract Manager the details of any judgment, criminal conviction, investigation or litigation pending against the Contractor or any of its officers, directors, employees, agents, or subcontractors, including any potential conflicts of interest of which the Contractor has knowledge, or learns of during the Contract term. Law firms or Attorneys providing legal services are required to identify any potential conflict with representation of any Department client in accordance with Massachusetts Board of Bar Overseers (BBO) rules.

10.1.16.10 Federal Anti-Lobbying and Other Federal Requirements

If receiving federal funds, the Contractor certifies compliance with federal anti-lobbying requirements including 31 USC 1352; other federal requirements; Executive Order 11246; Air Pollution Act; Federal Water Pollution Control Act and Federal Employment Laws.

10.1.16.11 Protection of Commonwealth Data, Personal Data and Information

The Contractor certifies that all steps will be taken to ensure the security and confidentiality of all Commonwealth/MBTA data for which the Contractor becomes a holder, either as part of performance or inadvertently during performance, with special attention to restricting access, use and disbursement of personal data and information under M.G.L. c. 93H and c. 66A and other applicable state and federal privacy requirements. The Contractor shall comply with M.G.L. c. 93I for the proper disposal of all paper and electronic media, backups or systems containing personal data and information. The Contractor shall also ensure that any personal data or information transmitted electronically or through a portable device is properly encrypted using (at a minimum) the Commonwealth's "Cryptographic Management Standard" set forth in the Enterprise Information Security Policies and Standards published by the Executive Office for Technology, Services and Security (TSS), or a comparable Standard prescribed by the MBTA. Contractors with access to credit card or banking information of Commonwealth/MBTA customers certify that the Contractor is PCI compliant in accordance with the Payment Card Industry Council Standards, and shall provide confirmation compliance during the Contract. The Contractor shall immediately notify the MBTA in the event of any security breach including the unauthorized access, disbursement, use or disposal of personal data or information, and in the event of a security breach, the Contractor shall cooperate fully with the MBTA and provide access to any information necessary for the MBTA to respond to the security breach and shall be fully responsible for any damages associated with the Contractor's breach including but not limited to G.L. c. 214, s. 3B.

For all Contracts involving the Contractor's access to personal information, as defined in [G.L. c. 93H](#), and personal data, as defined in [G.L. c. 66A](#), or access to MBTA or Commonwealth systems containing such information or data, Contractor certifies under the pains and penalties of perjury that the Contractor (1) has read M.G.L. c. 93H and c. 66A and agrees to protect any and all personal information and personal data; and (2) has reviewed all of the Enterprise Information Security Policies and Standards published by the Executive Office for Technology Services and Security (TSS), or stricter standards prescribed by the MBTA. Notwithstanding any contractual provision to the contrary, in connection with the Contractor's performance under this Contract, for all public authorities, executive offices, boards, commissions, agencies, departments, divisions, councils, bureaus, and offices, now existing and hereafter established, the Contractor shall: (1) obtain a copy, review, and comply with any pertinent security guidelines, standards, and policies; (2) comply with all Enterprise Information Security Policies and Standards published by the Executive Office for Security Services and Technology (TSS), or a comparable set of policies and standards ("Information Security Policy") as prescribed by the MBTA; (3) communicate and enforce such security guidelines, standards, policies and the applicable Information Security Policy among all employees (whether such employees are direct or contracted) and subcontractors; (4) implement and maintain any other reasonable appropriate security procedures and practices necessary to protect personal information and data to which the Contractor is given access by the MBTA from the unauthorized access, destruction, use, modification, disclosure or loss; (5) be responsible for the full or partial breach of any of these terms by its employees (whether such employees are direct or contracted) or subcontractors during or after the term of this Contract, and any breach of these terms may be regarded as a material breach of this Contract; (6) in the event of any unauthorized access, destruction, use, modification, disclosure or loss of the personal information or personal data (collectively referred to as the "unauthorized use"): (a) immediately notify the MBTA if the Contractor becomes aware of the unauthorized use; (b) provide full cooperation and access to information necessary for the MBTA to determine the scope of the unauthorized use; and (c) provide full cooperation and access to information necessary for the MBTA and the Contractor to fulfill any notification requirements. Breach of these terms may be regarded as a material breach of this Contract, such that the Commonwealth and MBTA may exercise any and all contractual rights and remedies, including without limitation indemnification under Section 9.1.10 of MBTA's [Terms and Conditions](#), withholding of payments, Contract suspension, or termination. In addition, the Contractor may be subject to applicable statutory or regulatory penalties, including and without limitation, those imposed pursuant to G.L. c. 93H and under [G.L. c. 214, § 3B](#) for violations under M.G.L. c. 66A.

10.1.16.12 Corporate and Business Filings and Reports

The Contractor certifies compliance with any certification, filing, reporting and service of process requirements of the [Secretary of State](#) and other Departments as related to its conduct of business in the Commonwealth; and with its incorporating state (or foreign entity).

10.1.16.13 Employer Requirements

Contractors that are employers certify compliance with applicable state and federal employment laws or regulations, including but not limited to [G.L. c. 5, s. 1](#) (Prevailing Wages for Printing and Distribution of Public Documents); [G.L. c. 7, s. 22](#) (Prevailing Wages for Contracts for Meat Products and Clothing and Apparel); [minimum wages and prevailing wage programs and payments](#); [unemployment insurance and contributions](#); [workers' compensation and insurance](#), [child labor laws](#), [AGO fair labor practices](#); [G.L. c. 149](#) (Labor and Industries); [G.L. c. 150A](#) (Labor Relations); [G.L. c. 151](#) and [455 CMR 2.00](#) (Minimum Fair Wages); [G.L. c. 151A](#) (Employment and Training); [G.L. c. 151B](#) (Unlawful Discrimination); [G.L. c. 151E](#) (Business Discrimination); [G.L. c. 152](#) (Workers' Compensation); [G.L. c. 153](#) (Liability for Injuries); [102 CMR 12.00](#) (Dependent Care Assistance Program); [29 USC c. 8](#) (Federal Fair Labor Standards); [29 USC c. 28](#) and the [Federal Family and Medical Leave Act](#) and M.G.L. c. 175M (Family and Medical Leave).

10.1.16.14 Federal And State Laws And Regulations Prohibiting Discrimination

Contractors certify compliance with applicable state and federal anti-discrimination laws including but not limited to the Federal Equal Employment Opportunity (EEO) Laws the Americans with Disabilities Act; 42 U.S.C Sec. 12,101, et seq., the Rehabilitation Act, 29 USC c. 16 s. 794; 29 USC c. 16. s. 701; 29 USC c. 14, 623; the 42 USC c. 45; (Federal Fair Housing Act); G. L. c. 151B (Unlawful Discrimination); G.L. c. 151E (Business Discrimination); the Public Accommodations Law G.L. c. 272, s. 92A; G.L. c. 272, s. 98 and 98A, Massachusetts Constitution Article CXIV and G.L. c. 93, s. 103; 47 USC c. 5, sc. II, Part II, s. 255 (Telecommunication Act; Chapter 149, Section 105D, G.L. c. 151C, G.L. c. 272, Section 92A, Section 98 and Section 98A, and G.L. c. 111, Section 199A, and Massachusetts Disability-Based Non-Discrimination Standards For Executive Branch Entities, and related Standards and Guidance, authorized under Massachusetts Executive Order or any disability-based protection arising from state or federal law or precedent. See also MCAD and MCAD links and Resources.

10.1.16.15 Right-to-Know Law

The Contractor shall certify that it will comply with the Massachusetts Right-To-Know Law, Chapter 470 of the Acts of 1983. Additionally, the Contractor agrees to submit a Material Safety Data Sheet (MSDS) for each toxic or hazardous substance, or mixture containing such substance, pursuant to M.G.L. c. 111F §§ 8, 9, and 10, and the regulations contained in 441 CMR § 21.06 when deliveries are made.

10.1.16.16 Small Business Purchasing Program (SBPP)

A Contractor may be eligible to participate in the SBPP, created pursuant to Executive Order 523, if qualified through the SBPP COMMBUYS subscription process at: www.commbuys.com and with acceptance of the terms of the SBPP participation agreement.

10.1.16.17 Other Damages

The term “other damages” shall include, but shall not be limited to, the reasonable costs the MBTA incurs to repair, return, replace or seek cover (purchase of comparable substitute commodities and services) under a Contract. “Other damages” shall not include damages to the MBTA as a result of third party claims, provided, however, that the foregoing in no way limits the MBTA’s right of recovery for personal injury or property damages or patent and copyright infringement under *Section 9.1.10* nor the MBTA’s ability to join the contractor as a third party defendant. Further, the term “other damages” shall not include, and in no event shall the contractor be liable for, damages for the MBTA’s use of contractor provided products or services, loss of MBTA records, or data (or other intangible property), loss of use of equipment, lost revenue, lost savings or lost profits of the MBTA. In no event shall “other damages” exceed the greater of \$100,000, or two times the value of the product or service (as defined in the Contract scope of work) that is the subject of the claim. *Section 9.0* sets forth the contractor’s entire liability under a Contract. Nothing in this section shall limit the MBTA’s ability to negotiate higher limitations of liability in a particular Contract, provided that any such limitation must specifically reference *Section 9.0* of the MBTA Terms and Conditions. In the event the limitation of liability conflicts with accounting standards which mandate that there can be no cap of damages, the limitation shall be considered waived for that audit engagement.

10.1.16.18 Northern Ireland Certification

Pursuant to G.L. c. 7 s. 22C for state agencies, state authorities, the House of Representatives or the state Senate, by signing this Contract the Contractor certifies that it does not employ ten or more employees in an office or other facility in Northern Ireland and if the Contractor employs ten or more employees in an office or other facility located in Northern Ireland the Contractor certifies that it does not discriminate in employment, compensation, or the terms, conditions and privileges of employment on account of religious or political belief; and it promotes religious tolerance within the work place, and the eradication

of any manifestations of religious and other illegal discrimination; and the Contractor is not engaged in the manufacture, distribution or sale of firearms, munitions, including rubber or plastic bullets, tear gas, armored vehicles or military aircraft for use or deployment in any activity in Northern Ireland.

10.1.16.19 Pandemic, Disaster or Emergency Performance

In the event of a serious emergency, pandemic or disaster outside the control of the MBTA, the MBTA may negotiate emergency performance from the Contractor to address the immediate needs of the MBTA even if not contemplated under the original Contract or procurement. Payments are subject to appropriation and other payment terms.

10.1.16.20 Subcontractor Performance

The Contractor certifies full responsibility for Contract performance, including subcontractors, and that comparable Contract terms will be included in subcontracts, and that the Department will not be required to directly or indirectly manage subcontractors or have any payment obligations to subcontractors.

10.1.17 Executive Orders

For covered Executive state Departments, the Contractor certifies compliance with applicable Executive Orders (see also Massachusetts Executive Orders), including but not limited to the specific orders listed below. A breach during period of a Contract may be considered a material breach and subject Contractor to appropriate monetary or Contract sanctions.

10.1.17.1 Executive Order 481. Prohibiting the Use of Undocumented Workers on State Contracts

For all state agencies in the Executive Branch, including all executive offices, boards, commissions, agencies, Departments, divisions, councils, bureaus, and offices, now existing and hereafter established, by signing this Contract the Contractor certifies under the pains and penalties of perjury that they shall not knowingly use undocumented workers in connection with the performance of this Contract; that, pursuant to federal requirements, shall verify the immigration status of workers assigned to a Contract without engaging in unlawful discrimination; and shall not knowingly or recklessly alter, falsify, or accept altered or falsified documents from any such worker

10.1.17.2 Executive Order 130. Anti-Boycott

The Contractor warrants, represents and agrees that during the time this Contract is in effect, neither it nor any affiliated company, as hereafter defined, participates in or cooperates with an international boycott (See IRC § 999(b)(3)- (4), and IRS Audit Guidelines Boycotts) or engages in conduct declared to be unlawful by G.L. c. 151E, s. 2. A breach in the warranty, representation, and agreement contained in this paragraph, without limiting such other rights as it may have, the MBTA shall be entitled to rescind this Contract. As used herein, an affiliated company shall be any business entity of which at least 51% of the ownership interests are directly or indirectly owned by the Contractor or by a person or persons or business entity or entities directly or indirectly owning at least 51% of the ownership interests of the Contractor, or which directly or indirectly owns at least 51% of the ownership interests of the Contractor.

10.1.17.3 Executive Order 346. Hiring of State Employees By State Contractors

Contractor certifies compliance with both the conflict of interest law G.L. c. 268A specifically s. 5 (f) and this order; and includes limitations regarding the hiring of state employees by private companies contracting with the MBTA. A privatization contract shall be deemed to include a specific prohibition against the hiring at any time during the term of Contract, and for any position in the Contractor's company, any state management employee who is, was, or will be involved in the preparation of the RFP, the negotiations leading to the awarding of the Contract, the decision to award the Contract, and/or the

supervision or oversight of performance under the Contract.

10.1.17.4 Executive Order 444. Disclosure of Family Relationships with Other State Employees

Each person applying for employment (including Contract work) within the Executive Branch under the Governor must disclose in writing the names of all immediate family related to immediate family by marriage who serve as employees or elected officials of the Commonwealth. All disclosures made by applicants hired by the Executive Branch under the Governor shall be made available for public inspection to the extent permissible by law by the official with whom such disclosure has been filed.

10.1.17.5 Executive Orders 523, 526, and 565

Executive Order 523 (Establishing the Massachusetts Small Business Purchasing Program). Executive Order 526 (Order Regarding Non-Discrimination, Diversity, Equal Opportunity and Affirmative Action which supersedes Executive Order 478). Executive Order 565 (Reaffirming and Expanding the Massachusetts Supplier Diversity Program). All programs, activities, and services provided, performed, licensed, chartered, funded, regulated, or contracted for by the state shall be conducted without unlawful discrimination based on race, color, age, gender, ethnicity, sexual orientation, gender identity or expression, religion, creed, ancestry, national origin, disability, veteran's status (including Vietnam-era veterans), or background. The Contractor and any subcontractors may not engage in discriminatory employment practices. The Contractor certifies compliance with applicable federal and state laws, rules, and regulations governing fair labor and employment practices. The Contractor also commits to purchase supplies and services from certified minority, women, veteran, service-disabled veteran, LGBT or disability-owned businesses, small businesses, or businesses owned by socially or economically disadvantaged persons; and Contractor commits to comply with any applicable Department contractual requirements pertaining to the employment of persons with disabilities pursuant to M.G.L. c. 7 s. 61(s). These provisions shall be enforced through the contracting Department, OSD, and/or the Massachusetts Commission Against Discrimination. Any breach shall be regarded as a material breach of the contract that may subject the contractor to appropriate sanctions.

10.1.17.6 Laws and Regulations Prohibiting Discrimination and Human Trafficking

Contractors acknowledge and certify as a condition of this Contract that they are responsible for complying fully with all state and federal laws prohibiting discrimination, human trafficking, and forced labor, including but not limited to Chapter 178 of the Acts of 2011.

10.1.18 Supplemental Provisions

10.1.18.1 Applicability

Where applicable, these Supplemental Provisions shall apply to this RFP. In the event of a conflict or disparity between these Supplemental Provisions and Standard Terms & Conditions, the Supplemental Provisions govern.

10.1.18.2 Performance Guarantee

|There is no Performance Guarantee required for this contract. |

10.1.18.3 Liquidated Damages

|There are no Liquidated Damages required for this contract. |

10.1.18.4 Security Requirements

|The Contractor shall certify that it will comply with the MBTA's Security Requirements as stated herein. The selected Contractor shall:

1. Submit a complete list of Contractor's employees, subcontractors, and agents that will perform work for the MBTA under this Contract. This list must be submitted prior to eligibility consideration for payment of delivery or completion of the first milestone. At a minimum, the list shall include:
 - a) Name and Employee Number/Identifier
 - b) Address
 - c) Job Title
 - d) Hours and Location of Work

Note: Immediate notification, in writing, is required for listed employees, subcontractors, and agents who leave Contractor's (direct or indirect) employment and/or any new employees, subcontractors or agents who are to be added to this list. Contractor is required to provide, upon request by the MBTA, periodic updates of the list throughout the life of the Contract.

2. Conduct for all current and future employees performing work under this Contract, a legally available criminal background check, including a Criminal Offender Record Information (CORI) background check with the Massachusetts Criminal History Systems Board and a driver's history check with the Massachusetts registry of Motor vehicles (if applicable). The CORI check shall include a Level II Sex Offenders Registry check. To the extent not already available to the Contractor, the Contractor shall apply for and make best efforts to obtain CORI access. The Contractor shall provide written documentation to the Authority that demonstrates the Contractor's compliance with the aforementioned requirements. Furthermore, the Contractor shall conduct these background and driver history checks at least once every two (2) years, or as otherwise specified by the MBTA. Any employee of the Contractor's with a history that includes a felony conviction, any conviction for theft, or who appears otherwise unsuitable to perform the work that is the subject of this solicitation throughout the Term of this Agreement or any extensions thereof, shall not be assigned by the Contractor to perform work under this Agreement.

The MBTA reserves the right to have MBTA Transit Police perform the required background checks, and shall promptly notify the Contractor in writing of any such action.

3. Distribute an MBTA-issued photograph Contractor identification badge to all Contractor employees, subcontractors, and agents who work on MBTA property. The contractor shall provide a current (less than 1 year old) photograph to the MBTA, along with the required completed badge issuance paperwork prior to being issued the badges. The following information shall be listed on the back of the contractor identification badges: training certifications, safety training, and other related security training required by the MBTA. No employee, subcontractor or agent of the Contractor will be allowed on MBTA property without clearly displaying the MBTA-issued identification badge on their person.
4. Insure that Contractor's employees, subcontractors, and agents:
 - a) Are not allowed on MBTA property except as required for stated work;
 - b) Are not allowed on MBTA property before and after service hours unless explicitly, contractually required to be there; and
 - c) Are forbidden from carrying firearms on MBTA property.
5. Provide to the MBTA, upon its request, any documents that pertain to:

- a) Contractor employee, subcontractor or agent conduct on MBTA property;
 - b) Security training; and
 - c) Monitoring/auditing of Contractor employees or agents while on MBTA property.
6. If, at any time during the term of this Agreement, and also during any and all extensions thereof, the MBTA establishes new or revised security policies and procedures as they relate to the Contractor's performance under this Agreement, the Contractor shall comply with such policies and procedures as deemed reasonable by the MBTA and the Contractor.

10.1.18.5 Right-of-Way Safety Training Requirements

In the event the Contractor's work is to be performed in proximity to bus ways, railroad or subway tracks, the Contractor shall obtain appropriate Right of Way safety training from the MBTA before commencing work.

10.1.19 Terms & Conditions Signature

IN WITNESS WHEREOF, the Contractor certifies under the pains and penalties of perjury that it shall comply with these MBTA Terms and Conditions under Section 9.0 for any applicable Contract executed with the MBTA as certified by their authorized signatory below:

Contractor Authorized Signatory:

Print Name:

Title:

Date:
